SPECIAL CIVIL APPLICATION NO. 13197 OF 1994
WITH
SPECIAL CIVIL APPLICATIONS NO. 3804 AND 13196 OF 1994

Date of decision: 2-2-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE,J
(2.2.1996)

Mr. G.H. Bhatt for the petitioner

C.A.V. JUDGMENT:

Heard the learned counsel for the parties. As facts as well as questions which have been raised in these three petitions are common these matters are being disposed of by this common order. After hearing the learned counsel for the parties I am satisfied that the petitions are to be accepted on the ground that the respondent Administrator of Palitana Municipality, Palitana, while passing the order on 1-3-1994 has not afforded a personal hearing to the petitioners.

2. The petitioners were in the service of Palitana Municipality on different posts. Shri Mithabhai Ambabhai More, petitioner No.1 of special civil application No.13197 of 1994 was appointed on the post of Health Sub Inspector on 22-11-1978. It was a regular appointment, as stated by the petitioner. He made request to the respondent Municipality for giving him promotion. A resolution has been passed on 12-1-1994 under which he was ordered tobe given promotion and accordingly he was given promotion to the post of Cess Collection Mistry, which post he joined on 17-1-1994. Similarly petitioner No.2 was given promotion to the post of Octroi Junior Inspector, and petitioner No.3 was given promotion to the post of Treasury and Bill Clerk in Accounts Branch. The petitioners (in all seven) of special civil application No.13196 of 1994 were appointed in the

Municipality on daily wage. All these petitioners, having sufficient length of service as daily wagers, made request to the Municipality to regularise their service and to give them the pay scale of the post on which they were working on daily wage. The Municipality, by its resolution dated 12-1-1994, accepted their prayer, and in pursuance thereof order has been passed to regularise their service and to give them the pay scale of the post concerned. The petitioner in special civil application No.38o4 of 1994 was appointed on daily wage and he also applied for regularisation of his service. Accordingly on 12-1-1994 his services were resolved to be regularised and it was further resolved to give him the pay in the regular pay-scale.

3. Against the aforesaid resolutions two persons, namely, H.I. Baloch, the then Vice President of the Municipality and one Shri S.U.Dave filed appeal under section 258 of the Gujarat Municipalities Act, 1963, before the Collector, Bhavnagar. The Collector, Bhavnagar, vide his order dated 31st January, 1994 stayed the execution and implementation of the resolutions passed by the Municipality

in its meeting held on12-1-1994. It is not in dispute that the injunction has been granted by the Collector without hearing the beneficiaries of the resolutions, namely, the petitioners in the present writ petitions. At a subsequent stage the petitioners made application before the Collector for impleading them as parties which has been accepted. Some other persons have also filed regular civil suit No.48 of 1974 in the Court of Civil Judge (Senior Division), Bhavnagar, against the resolutions of the Municipality and therein also order of status quo has been made.

4. In place of the elected Board of the Palitana Municipality, Administrator was appointed and the Administrator, by his order dated 1-3-1994, has cancelled all the orders under which the petitioners were given promotion or regular appointment as well as pay in regular pay-scale of the posts on which they were working as daily wagers. After passing of the order by the Administrator, the Collector, Bhavnagar, vide his order dated 17-9-1994 decided the appeal filed before him under section 258 of the Municipalities Act. The appeal, as it comes out from the translated copy of the order, has not been decided on merits. The Collector has noticed the fact that the resolutions which were challenged in appeal have already been withdrawn or cancelled by the respondent Municipality under its order dated 1-3-1994.

5. The learned counsel for the petitioners has argued that the appeal filed by the Vice President of the Municipality and another person before the Collector under section 258 of the Municipalities Act was not maintainable. It is not necessary to go into this question as raised by the learned counsel for the petitioners as, whatever ground may be given for dismissal of the appeal, the fact remains that the Collector has already dismissed the appeal against the petitioners. In view of this fact the prayer of the petitioners to the extent of quashing and setting aside the order dated 17-9-1994 no more survives.

6. Learned counsel for the petitioners next contended that the order of the Administrator dated 1-3-1994 is a nullity. The petitioners are the beneficiaries under the resolutions which have been passed by the Municipality. In pursuance of the said resolutions necessary orders have been passed for regularisation of their service and giving them the regular pay-scale and those orders have also been given effect to. In one case the petitioner was given promotion. The result of the order dated 1-3-1994 is that the regular appointment of daily wagers and promotion of one person is withdrawn; and daily wagers have been relegated to the position of daily wagers and the promotee has been reverted

back to the lower post. These are civil consequences flowing from the order dated 1-3-1994. The petitioners have been put to monetary loss. Their emoluments have been reduced and their status has also been changed to their detriment. This order dated 1-3-1994 may be an administrative order, nevertheless having serious and material consequences affecting the pay packets of the petitioners. The Administrator should have given them an opportunity of hearing. In support of this contention learned counsel for the petitioner has placed reliance on the decision of this Court in the case of H. H. Parmar vs. Collector, Rajkot and another, reported in 20(2) GLR 97, and in the case of Basantlal Ramanlal vs. Veeramgam Municipality, reported in 1995(2) GLH 436. On the other hand learned counsel for the respondents contended that the Administrator need not give any opportunity of hearing to the petitioners because the resolutions passed by the Municipality was ex facie illegal and arbitrary. It has next been contended that these are administrative matters and as such principles of natural justice to the extent as contended by the learned counsel for the petitioner need not be followed. So far as the two decisions of this Court on which reliance has been placed by the learned counsel for the petitioner are concerned, it is the contention of the learned counsel for the respondents that those are decisions on the provisions of section 258 of the Gujarat Municipalities Act, 1963. In section 258 of the Act only requirement of hearing of the Municipality is there, and this court has held in the aforesaid two cases that the beneficiaries of the resolutions of the municipalities which are subject matter of challenge before the Collector under section 258 should be heard before making any order.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The aforesaid judgments of this Court fully support the contention of the learned counsel for the petitioners. When the Collector hearing appeal against the resolution under section 258 of the Municipalities Act has to give an opportunity of hearing to the beneficiaries of the resolution, I fail to see any justification in the contention of the learned counsel for the respondents that the administrator who is cancelling the resolution need not give any opportunity of hearing to the petitioners who are indisputably beneficiaries of the resolutions. It is not the form or the provisions of a particular Act from which the right of hearing follows. It is the action which is to be taken by the authority which is relevant. If the authority decides to take out the benefit which has been given under earlier order by recalling that order, then certainly the said authority is under obligation to adhere

to the principles of natural justice, unless some statutory provision otherwise provides. It is well settled principle that any authority before passing an order prejudicial to a person should afford a reasonable opportunity of hearing to that person, if the order results in civil consequences or denial of some rights or taking back of some benefits.

8 In the present case, as stated earlier, it is no more in dispute that the petitioners are beneficiaries and it is not the case of the respondents that setting aside of the resolutions and orders will not result in any loss to the petitioners. At the cost of repetition I may state that it is not a simple loss, but substantial loss has been caused to the petitioners because of the cancellation of the resolutions. In view of these facts, the order of the Administrator and the resolution dated 1-3-1994 cannot be allowed to stand and same have to be quashed.

9. In writ petition No.13197 of 1994 no interim relief has been granted by this Court. In writ petition No.13196 of 1994 by way of interim relief the petitioners were allowed to continue as daily wagers. In the third writ petition also the petitioner was ordered to continue as daily wager. In view of these facts I consider it proper that status as it exists today shall continue till the Administrator passed appropriate orders after hearing the petitioners in the present case. Till the Administrator decides as to whether the resolutions should be reconsidered or not, I do not consider it to be a fit case where the petitioners should be given the benefit of the resolutions dated 12-1-1994 and consequent orders. Whatever status they are having today and whatever be the nature of their employment, the same shall continue.

10. In the result these writ petitions are partly allowed. The resolution and order of the Administrator of Palitana Municipality dated 1-3-1994 are quashed and set aside. However, it shall be open to the Administrator or the elected body to pass appropriate orders in the matter after giving an opportunity of hearing to the petitioners. The respondent Municipality is directed to pass appropriate orders within three months from the date of receipt of certified copy of this order. In case the Municipality decided not to pass any order, and accepts the resolutions passed earlier, then the petitioners shall be entitled to the benefits of the orders which were earlier made, with continuity of service and arrears,if any, to be given to them accordingly. In case the respondents decide to pass fresh orders, they shall be made within the period stipulated as aforesaid. In case the Municipality ultimately decides against the petitioners, then speaking

orders are expected to be passed and thereafter the same may be served on the petitioners by registered post. In case, after hearing, the matter is decided in favour of the petitioners then they shall be entitled to all consequential benefits as aforesaid. Rule discharged. No order as to costs.